IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.5624 OF 2006

Vivek Shantaram Thakur and anr. .. Petitioners.
(Orig.Defendants)

Vs

Shri Arjun Nana Thakur, .. Respondent.
(Orig.plaintiff)

Mr K.N.Kore, for the petitioners.

CORAM : D.B.BHOSALE,J.
DATE : 23.08.2006

PC:

1. Heard the learned counsel for the petitioners.

2. This petition is directed against the concurrent findings recorded by the courts below in the proceedings arising from Exhibit-5 application filed by the respondent-plaintiff seeking injunction against the petitioners-defendants from obstructing his possession over the suit property till the final disposal of the suit. The order of status-quo on the application Exhibit-5 was passed on 23.6.2003. The application Exhibit-5 was allowed by the order dated 16.9.2003 in favour of the respondent-plaintiff. Against that order Misc.Appeal was preferred and it came to be disposed of on 30.6.2006. Admittedly, during pendency of the Misc.Appeal no interim order was passed in favour of the

petitioners and as a result of which the interim order is running against the petitioners for about three years. Mr Kore, learned counsel for the petitioners, invited my attention to several documents annexed to the petition as also 7/12 extracts to contend that the plaintiff had not proved his title in the suit property and was therefore not entitled for the reliefs claimed in the suit as also in the application at Exhibit-5. He further submitted that there are several documents including the decree at Exhibit 18/7, the 7/12 extract and the mutation entry clearly show that the petitioners are the owners of the suit property and that they are in possession of the same. Insofar as the decree on which he placed reliance upon is concerned, admittedly the respondent-plaintiff was not party to the said suit. After appreciating the entire material placed on record, both the courts have concurrently held that the plaintiff has, prima facie, proved his possession over the suit property. For reaching this conclusion, a reliance was also placed on the panchanama prepared by the Circle Officer at Exhibits 3/4 and 3/10, which show that the plaintiff is in possession of the suit property. Mr Kore placed reliance on the judgment of the Supreme Court in Kishore Kumar Khaitan and anr Vs. Praveen Kumar Singh , (2006) 3 Supreme Court Cases 312. Considering that there are concurrent findings recorded

by both the Courts below and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under Article 227 of the Constitution of India to disturb the findings of fact, the present writ petition cannot be entertained. The judgment relied upon, in my opinion, is of no avail to the petitioners. In the circumstances, this petition is dismissed. However, the trial court shall decide the suit on its own merits in accordance with law and uninfluenced by the observations made in these proceedings. Hearing of the suit is expedited.

(D.B.BHOSALE,J.)